

Policy for Handling Public Records Requests

Purpose

To formalize a policy for the handling of requests received by the Department from the public under the Idaho Public Records Law, Idaho Code §§ 9-337, et seq. This policy and procedure shall supersede and take the place of any preceding policies. In the event of any conflict between this policy and the Idaho Public Records Law, the Public Records Law shall govern.

Statement of Policy

Requests to be in Writing

Except for members of the Idaho Legislature, all persons requesting access to the Department's records shall be required to make a written request.

A public records request submitted by electronic mail or facsimile shall be deemed to be a written request.

Response Time

The public records request shall be deemed to be received on the date that a Department official or employee receives a written request. If the request is submitted by electronic mail, the date of receipt shall be the date that a Department official or employee opens the electronic file. If the request is submitted via facsimile and the facsimile is received after normal business hours, it shall be deemed received the following business day.

The Department shall respond in writing to all public records requests within three (3) working days after the date that the request is received. The response shall either grant the request, deny the request, or give notice that additional time is needed to fill the request.

If more than three (3) working days are required to retrieve or locate any requested records, an additional seven (7) working days may be taken to fill the request so long as the person making the request is notified in writing, within three (3) working days of receipt of the request, that the additional time is needed.

If the Department determines that an existing electronic document must be converted to another electronic format, by the Department or a third party, and that such conversion cannot be completed within ten (10) working days, the Department shall notify in writing the person requesting the records. The Department shall provide the converted record at a time mutually agreed on between the Department and requester, with due consideration given to any limitations that may exist due to the conversion process or due to the use of a third party to make the conversion.

Logging in the Request

All public records requests received by the Department shall be forwarded to the appropriate division promptly upon receipt. The responding division shall advise the deputy attorney general of all public records requests received by that division. The responding division shall keep a file containing copies of all response letters sent to requestors. The responding division shall advise the deputy attorney general by electronic mail or by a copy of the response to the public records request.

Upon request of the Department's public information officer, a copy of all public records requests received and a copy of the responsive cover letter responding thereto received by a designated division shall be provided to the Department's public information officer. A copy of documents provided in response need not be provided to the public information officer unless specifically requested by the public information officer.

Along with those instances described herein where deputy attorney general review or response is required, upon request of the Director or a division administrator, the deputy attorney general assigned to the Department may respond to a public records request.

Scope of the Request

A person making a public records request shall not be asked the reason for the request except to inquire whether a list of persons will be used for a mailing or telephone list, or if additional information is necessary for the Department to evaluate a request for a fee waiver.

Where a request is broad or unclear, the Department staff person assigned to the request, the custodian, the coordinator, or the deputy attorney general assigned to the Department may contact the person making the request to determine if the person wants to narrow or clarify the scope of records sought. Any such conversations shall be documented in writing. If the scope or substance of a public records request is changed significantly by the person making the request before the request is filled by the Department, the person shall be encouraged to withdraw the original request and submit a new request or the changes to the original request may be documented in the Department's response to the request.

A person may request to view or copy existing written documents and electronic files containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by the Department. The Department will not prepare new documents in response to a public records request.

Lists

Unless the persons whose names are on a list have given their consent for the list to be used as a telephone or mailing list, whenever a person submits a request to inspect or take a copy of a list that could potentially be used as a telephone or mailing list, the custodian shall ask whether the list will be used as a telephone or mailing list. If the response is "yes," the request shall be denied in writing. If the response is "no," then the person making the request may inspect and/or obtain a copy of the list.

Before distribution, the Department staff shall place the following notice on any list that could potentially be used as a telephone or mailing list without consent of the persons on the list: "WARNING: USE OF THIS LIST AS A MAILING LIST OR A TELEPHONE LIST IS PROHIBITED BY IDAHO CODE § 9-348 AND PUNISHABLE BY A CIVIL PENALTY UP TO \$1,000."

Denials of Public Records Requests

Certain records may be withheld from disclosure due to their confidential nature; the exceptions to public records disclosure are described in the Idaho Public Records Law.

Any time that a person submitting a public records request is not allowed access to a document or any portion of a document which falls within the scope of the request, it is a denial. All denials must have deputy attorney general review.

All denials of public records requests shall be in writing and shall include reference to the specific statutory provision which is the basis for the denial and the requesting person's right to file an appeal within 180 days from the date of mailing of the notice of denial.

Where possible, exempted portions of a record or document, or specific pages of a record or document, shall be removed or struck out so that the rest of the material can be provided to the person making the request. Notice of partial denial shall, in all respects, be made in the same manner as a complete denial.

Trade secrets submitted to or obtained by the Department and not otherwise required by federal or state law to be released shall not be disclosed to the public. Upon receipt of a public records request which includes within its scope documents which might be a trade secret, deputy attorney general review shall be sought before the request is filled or denied. Trade secrets are those records or information given to, submitted to, or otherwise obtained by the Department, the disclosure of which could cause economic or other competitive harm to the company which is the subject of the trade secret, and which are claimed by the company to be subject to confidential treatment. A company claiming records are exempt as trade secret will be required to defend any claim of trade secret or other basis for nondisclosure in the event of an administrative or judicial challenge to the Department's nondisclosure.

Copying of Records

Where the number of documents are not voluminous, requested records may be copied and mailed at the request of the person submitting a public records request. Where a request is broad, the person submitting the public records request shall be sent a letter indicating that the person may arrange to visit the Department or division office and examine the records in-house.

Idaho Code Section 9-338 authorizes the Department to establish a copying fee schedule not to exceed the actual cost to the Department of copying the record. The provision further provides that the actual cost to the Department shall not include any administrative or labor costs resulting from locating and providing a copy of the public record; provided, however, that the Department may establish a fee to recover the actual labor cost associated with locating and copying documents if: (1) the request is for more than one hundred (100) pages; (2) the request includes records from which nonpublic information must be deleted; or (3) the actual labor associated with locating and copying documents for a request exceeds two (2) person hours. Pursuant to Idaho Code Section 9-338, the Department adopts the following fee schedule:

Idaho Code Reference	Type of Work Involved	Costs
9-338(8)(a)	Photocopying less than 50 sheet pages on standard 8 ½" x 11" paper	No charge
9-338(8)(a)	Photocopying more than 50 sheet pages but less than 100 pages on standard 8 ½" x 11" paper	Actual copying cost of \$.10 per page
9-338(8)(a)	Photocopying on sheets other than standard 8 ½" x 11" paper (e.g. blueprints, maps)	Actual copying cost, varies depending on size
9-338(8)(a)	Retrieval of archived information	\$3 per box, actual out of pocket cost
9-338(8)(a)(i)	Photocopying more than 100 sheet pages on standard 8 ½" x 11" paper	\$12 per hour plus \$.10 per page
9-338(8)(a)(ii)	Request includes records from which non-public information must be deleted	\$12 per hour plus \$.10 per page

Idaho Code Reference	Type of Work Involved	Costs
9-338(8)(a)(iii)	Where actual labor associated with locating and photocopying/printing hard copy and/or electronic documents equals or exceeds two (2) person hours	\$12 per hour plus \$.10 per page
9-338(8)(b)(i) 9-338(8)(b)(iii)	Where the Department has an out-of-pocket cost	Actual out-of-pocket cost
9-338(8)(b)(ii)	Where the Department has a standard charge for selling information in the form of a publication	Standard cost for selling information in the form of the publication

The Department may choose to obtain copies made to satisfy a public records request from a commercial copying service. In such cases, the person making the request shall be responsible for the cost charged by the commercial copying service if the cost is \$5.00 or more.

The fees to be charged for providing public records in the form of computer tape, computer disk, compact disk (CD), microfilm or similar or analogous record shall be the Department's direct cost of copying the information in that form.

If there is reason to believe that a requestor or group of requestors is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the Department will aggregate such requests to determine the total fee and will charge accordingly.

When copies or printouts are duplexed, each side of the copy on which print appears shall be treated as a single copy for the purpose of fee assessment. In this way, fees for duplexed copies shall be assessed according to the same schedule as fees for single-sided copies.

Shipping and Mailing Fees

Where copies of records are mailed or shipped at the request of the person seeking access to the records, and the cost is \$5.00 or more, the person shall be responsible for reimbursement to the Department of the actual mailing or shipping cost incurred by the Department.

Prepayment of Fees

Where the costs associated with filling a public records request might cause the person making the request to withdraw or narrow the request, the person may be informed of the estimated charges before the Department acts on the request.

Prepayment of costs associated with copying records may be required on a case-by-case basis if there is reason to believe the charges might not be paid, the request is voluminous, or other circumstances exist which indicate prepayment is appropriate. Any overpayment shall be promptly refunded.

Fee Waivers and Exemptions

Fees may be waived if the requestor demonstrates either the inability to pay or that the public's interest or the public's understanding of the operations or activities of government or its records would suffer by the assessment or collection of any fee.

The Department may seek additional information from a requestor to support a demonstration of qualification for a fee waiver.

All requests for a waiver shall be evaluated on a case-by-case basis. Any response to a request for a waiver of fees shall have deputy attorney general review.

Billing and Fee Collection

When a fee is charged for the copying or printing of public records, the requestor shall be sent an invoice, which may be in the form of a letter. The requestor has thirty (30) days to remit payment to the Department.

In the event that a requestor has not remitted a payment within thirty (30) days and remains delinquent on such payment, the Department will disclose and allow examination of the requested records but will not undertake any actions that would result in additional fees under any fee schedule contained in this policy until the overdue payment has been remitted.

While the Department records are being examined in-house, a staff member shall be present in the same room or at a nearby location.

Requests Submitted by an Attorney

When the Department or a division receives a public records request from an attorney or law office, a copy of the request shall be forwarded to the deputy attorney general for review.

Communications to or from the Attorney General's Office

If a public records request potentially encompasses any communications to or from the Attorney General's Office, deputy attorney general review shall be sought before the request is filled or denied.

Implementation

This policy shall be effective the 1st day of February, 2006.

PAMELA I. AHRENS
DIRECTOR

Revised: March 24, 2006